

To: CN=Richard Parkin/OU=R10/O=USEPA/C=US@EPA;CN=Marianne Holsman/OU=R10/O=USEPA/C=US;CN=Bill Dunbar/OU=R10/O=USEPA/C=US@EPA;CN=Sheila Eckman/OU=R10/O=USEPA/C=US@EPA;CN=Judy Smith/OU=R10/O=USEPA/C=US@EPA;CN=Phil North/OU=R10/O=USEPA/C=US@EPA;CN=Tami Fordham/OU=R10/O=USEPA/C=US@EPA;CN=Cara Steiner-Riley/OU=R10/O=USEPA/C=US@EPA;CN=Palmer Hough/OU=DC/O=USEPA/C=US@EPA;CN=Kate Kelly/OU=R10/O=USEPA/C=US@EPA;CN=Dennis McLerran/OU=R10/O=USEPA/C=US@EPA[]; N=Marianne Holsman/OU=R10/O=USEPA/C=US;CN=Bill Dunbar/OU=R10/O=USEPA/C=US@EPA;CN=Sheila Eckman/OU=R10/O=USEPA/C=US@EPA;CN=Judy Smith/OU=R10/O=USEPA/C=US@EPA;CN=Phil North/OU=R10/O=USEPA/C=US@EPA;CN=Tami Fordham/OU=R10/O=USEPA/C=US@EPA;CN=Cara Steiner-Riley/OU=R10/O=USEPA/C=US@EPA;CN=Palmer Hough/OU=DC/O=USEPA/C=US@EPA;CN=Kate Kelly/OU=R10/O=USEPA/C=US@EPA;CN=Dennis McLerran/OU=R10/O=USEPA/C=US@EPA[]; N=Bill Dunbar/OU=R10/O=USEPA/C=US@EPA;CN=Sheila Eckman/OU=R10/O=USEPA/C=US@EPA;CN=Judy Smith/OU=R10/O=USEPA/C=US@EPA;CN=Phil North/OU=R10/O=USEPA/C=US@EPA;CN=Tami Fordham/OU=R10/O=USEPA/C=US@EPA;CN=Cara Steiner-Riley/OU=R10/O=USEPA/C=US@EPA;CN=Palmer Hough/OU=DC/O=USEPA/C=US@EPA;CN=Kate Kelly/OU=R10/O=USEPA/C=US@EPA;CN=Dennis McLerran/OU=R10/O=USEPA/C=US@EPA[]; N=Sheila Eckman/OU=R10/O=USEPA/C=US@EPA;CN=Judy Smith/OU=R10/O=USEPA/C=US@EPA;CN=Phil North/OU=R10/O=USEPA/C=US@EPA;CN=Tami Fordham/OU=R10/O=USEPA/C=US@EPA;CN=Cara Steiner-Riley/OU=R10/O=USEPA/C=US@EPA;CN=Palmer Hough/OU=DC/O=USEPA/C=US@EPA;CN=Kate Kelly/OU=R10/O=USEPA/C=US@EPA;CN=Dennis McLerran/OU=R10/O=USEPA/C=US@EPA[]; N=Judy Smith/OU=R10/O=USEPA/C=US@EPA;CN=Phil North/OU=R10/O=USEPA/C=US@EPA;CN=Tami Fordham/OU=R10/O=USEPA/C=US@EPA;CN=Cara Steiner-Riley/OU=R10/O=USEPA/C=US@EPA;CN=Palmer Hough/OU=DC/O=USEPA/C=US@EPA;CN=Kate Kelly/OU=R10/O=USEPA/C=US@EPA;CN=Dennis McLerran/OU=R10/O=USEPA/C=US@EPA[]; N=Phil North/OU=R10/O=USEPA/C=US@EPA;CN=Tami Fordham/OU=R10/O=USEPA/C=US@EPA;CN=Cara Steiner-Riley/OU=R10/O=USEPA/C=US@EPA;CN=Palmer Hough/OU=DC/O=USEPA/C=US@EPA;CN=Kate Kelly/OU=R10/O=USEPA/C=US@EPA;CN=Dennis McLerran/OU=R10/O=USEPA/C=US@EPA[]; N=Tami Fordham/OU=R10/O=USEPA/C=US@EPA;CN=Cara Steiner-Riley/OU=R10/O=USEPA/C=US@EPA;CN=Palmer Hough/OU=DC/O=USEPA/C=US@EPA;CN=Kate Kelly/OU=R10/O=USEPA/C=US@EPA;CN=Dennis McLerran/OU=R10/O=USEPA/C=US@EPA[]; N=Cara Steiner-Riley/OU=R10/O=USEPA/C=US@EPA;CN=Palmer Hough/OU=DC/O=USEPA/C=US@EPA;CN=Kate Kelly/OU=R10/O=USEPA/C=US@EPA;CN=Dennis McLerran/OU=R10/O=USEPA/C=US@EPA[]; N=Palmer Hough/OU=DC/O=USEPA/C=US@EPA;CN=Kate Kelly/OU=R10/O=USEPA/C=US@EPA;CN=Dennis McLerran/OU=R10/O=USEPA/C=US@EPA[]; N=Kate Kelly/OU=R10/O=USEPA/C=US@EPA;CN=Dennis McLerran/OU=R10/O=USEPA/C=US@EPA[]; N=Dennis McLerran/OU=R10/O=USEPA/C=US@EPA[]

Cc: []

From: CN=Hanady Kader/OU=R10/O=USEPA/C=US

Sent: Tue 9/27/2011 7:22:44 PM

Subject: Alaska Journal of Commerce: Judge upholds state permit system, denies claims against Pebble

[a ruling issued Sept. 26](#)

andrew.jensen@alaskajournal.com

<http://www.alaskajournal.com/Alaska-Journal-of-Commerce/September-2011/BREAKING-Judge-upholds-state-permit-system-denies-claims-by-Pebble-foes/>

Superior Court Judge Eric Aarseth has upheld the state's exploratory permitting system against a challenge from Pebble mine opponents.

Andrew Jensen, Alaska Journal of Commerce

In a ruling issued Sept. 26, Aarseth denied every claim by Nunamta Aulukestai, a coalition of villages in the Bristol Bay area that sued the state in July 2009 alleging the exploratory permit system was unconstitutional and that public notice, comment and appeals processes should be available for the miscellaneous land use and temporary water permits issued to the Pebble Limited Partnership. Pebble joined the case as an intervenor in defense of the state exploratory permitting system. Nunamta, represented by environmental law firm Trustees for Alaska, further alleged that exploratory activity by Pebble was harming the vegetation, water resource and wildlife in the area. Aarseth wrote that he was unpersuaded by any of the expert or anecdotal evidence presented by Nunamta at the trial, which took place over 10 days last December. Further, he found that the permits issued for exploratory activity at Pebble did not require public notice or comment because they are not a "disposal" of rights as the permits are fully revocable. Regarding damage to the environment, expert testimony provided by Nunamta only spoke to "potential" harm, Aarseth wrote, while offering no evidence of actual harm. He described one expert witness, Lance Trasky, as providing "seat of his pants speculation" regarding alleged impacts on fish from water withdrawals by Pebble and by helicopters on caribou herds. After summarizing the state's monitoring of Pebble's exploratory activity to ensure compliance with the terms of the permits, Aarseth wrote:

"All of these documented efforts support the conclusion that the state was proactive when issuing permits with appropriate restrictions on Pebble's activity and not merely rubber-stamping the applications. Further, the review process as well as the field surveys/investigations indicate that the State was actively enforcing the permits issued and thus placing itself in a reasonable position to revoke the permits if necessary. Last, by responding to concerns by Nunamta both in the review process as well as in enforcing the [permit] conditions, the State showed a reasonable concern for the concurrent users of the Pebble Area."

Aarseth found Nunamta did not meet its burden of proof to show environmental harm and concluded, "Moreover, contrary to Plaintiffs' assertions, the weight of the evidence tends to show that exploration activities are not changing water quality in the Pebble study area."

He was also persuaded that Pebble has a "successful reclamation program" and there was no evidence of damage to vegetation. Aarseth similarly dismissed claims of harm to caribou or fish populations. "The evidence shows that more than 20 years after minerals were first discovered at Pebble, the site continues to have pristine water and support wildlife and fisheries resources," Aarseth wrote. "The harms that Plaintiffs' witnesses describe are speculative; they are neither harms occurring in fact nor did they show that the harm will necessarily occur."

Andrew Jensen can be reached at andrew.jensen@alaskajournal.com.

~~~~~

Hanady Aisha Kader  
Public Affairs Specialist  
U.S. Environmental Protection Agency, Region 10  
206.553.0454 (desk) 206.225.8127 (cell)  
[kader.hanady@epa.gov](mailto:kader.hanady@epa.gov)

---